

Canadian Society of Civil Engineers.

112 MANSFIELD ST., MONTREAL.

The following proposed Acts of Incorporation for the Dominion and local legislatures, drawn up by Mr. Creelman, Q.C., of Toronto, are sent to you by order of Council for your private information, and I am directed to inform you that they will be taken up for discussion on the first day of the Annual General Meeting, Tuesday, January 14th next.

C. H. McLeod,

Secretary.

ANALYSIS OF COUNSEL'S MEMORANDUM.

I. THE PRESENT POSITION OF CIVIL ENGINEERS.

- (a) The powers already granted by Dominion Act to Canadian Society.
- (b) The English Institution of Civil Engineers with Royal Charter.
- (c) Comparison between Canadian Act and English Charter and between the By-Laws of the two Societies.
- (d) The American Society.

II. ANALOGOUS SOCIETIES AND ASSOCIATIONS WHICH ARE NOT CLOSE CORPORATIONS.

- (i) Royal Institute of British Architects.
- (ii) Ontario Association of Stationary Engineers.
- (iii) Ontario Institute of Chartered Accountants.
- (iv) Ontario Association of Architects.
- (v) Ontario Veterinary Association.

III. PROFESSIONS AND ASSOCIATIONS WHICH ARE CLOSE CORPORATIONS UNDER PROVINCIAL STATUTES.

- (1) Druggists (Pharmacy Act).
- (2) Dentists.
- (3) Legal Profession.
- (4) Medical Profession.
- (5) Veterinary Surgeons in Manitoba.
- (6) Land Surveyors in Ontario and elsewhere.

IV. CONSTITUTIONAL ASPECT: POWERS OF DOMINION PARLIAMENT, Dominion Land Surveyors.

V. DIFFICULTY OF SOLVING THE QUESTION.

- (a) Experienced in Canada: unique situation.
- (b) And in U. S. A.
- (c) Position in England.

VI. PROPOSED SOLUTION.

- (1) Draft of Public Bill for Ontario Legislature.
- (2) Draft to amend Dominion Act of Incorporation.
- (3) Which should be attempted first?
- (4) Further points for consideration.

(Strictly Confidential.)

MEMORANDUM FOR THE COMMITTEE OF THE CANADIAN SOCIETY OF CIVIL ENGINEERS, APPOINTED TO CONSIDER AND SECURE SPECIAL LEGISLATION.

The Society is incorporated by Chapter 124 of 50 and 51 Victoria, Canada, for the purpose of facilitating the acquirement and interchange of professional knowledge among its members, and more particularly to promote the acquisition of that species of knowledge which has special reference to the profession of Civil Engineering, and, further, to encourage investigation in all departments and branches of knowledge connected with the profession.

The Society is empowered to acquire and hold such property as is necessary to carry out the purposes of incorporation, and to pass regulations and By-Laws for its direction and management, including all rules that may be deemed necessary for the maintenance of the honour and dignity of the profession.

The Society is to be governed by a President, Vice-Presidents and Council, to be constituted as may be provided for by By-Laws, and the first meeting of the Council is to be held within six months after incorporation.

The Charter just referred to is very largely based upon the Charter of the English Society, being the Institution of Civil Engineers, which was incorporated by Royal Charter in 1828. This Charter as amended by a supplementary Charter in 1887 incorporates the Institution "for the general advancement of Mechanical Science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a Civil Engineer, being the art of directing the great sources of power in Nature for the use and convenience of man, as the means of production and of traffic in states both for external and internal trade, as applied in the construction of roads, bridges, aqueducts, canals, river navigation and docks, for internal intercourse and exchange, and in the construction of ports, harbours, moles, breakwaters and lighthouses, and in the art of navigation by artificial power for the purposes of commerce, and in the construction and adaptation of machinery, and in the drainage of cities and towns."

These powers as set forth in the Charter are practically the same as those possessed by the Canadian Society; but as they are given somewhat more in detail, I may state them about as follows:—

- (1) The right to use a Corporate Seal.
- (2) To hold and dispose of lands and other property.
- (3) To sue and be sued in its corporate name.
- (4) To elect a governing body called the "Council."
- (5) To make By-Laws (a) for the regulation of the Institution, (b) for the admission of members, (c) the management of its property, (d) the mode of electing its officers, and (e) the appointment of officials.

It is expressly provided in the Charter, that no resolution or By-Law shall be made in opposition to the general scope, true intent and meaning of the Charter or the Laws or Statutes of the realm.

The government of the Institution is regulated in its details by a very elaborate set of By-Laws, which I have carefully read and considered; but nothing in the Charter or in By-Laws confers any authority to establish what is popularly known as a "close Corporation," or

confers upon the members any special or exclusive privilege, except that of being a member of the Institution and of enjoying its educational advantages and the privileges of association.

On all essential points the powers of the Canadian Society of Civil Engineers and of the Institution of Civil Engineers are identical.

I have also read the By-Laws of the Canadian Society, and am able to say that they seem to cover all, or very nearly all, the matters provided for by the By-Laws and regulations of the English Institution, so that both bodies are proceeding very largely upon the same lines.

The American Society of Civil Engineers was instituted in 1852. It is not incorporated, and is merely an Association. Its objects are expressed to be "the advancement of engineering knowledge and the maintenance of a high professional standard among its members." This Society does not in express terms possess educational powers, and its membership includes Engineers, Architects and Marine Architects. I have not been able to gather much in the way of instruction from a perusal of the Constitution, Rules and Regulations of this Society, as they quite clearly apply to and bind the members of the Society only.

The Royal Institute of British Architects was established in 1834, and was incorporated by Royal Charter in 1837. Its constitution is somewhat similar to that of the Institution of Civil Engineers, and after a careful perusal of its Charter and By-Laws and of all the literature which I can find on the subject, there does not seem to me to be anything to prevent any architect practising in England, although not a member of the Royal Institute.

The Ontario Association of Stationary Engineers is incorporated by an Ontario Act of 1891, as an Association for holding examinations and granting certificates of qualification and efficiency as Stationary Engineers. None of the powers of a close Corporation are given to this Association, and there is nothing in the Act to prevent any person practising as a Stationary Engineer in Ontario, if he can find employment, although he may not be a member of the Association.

The Institute of Chartered Accountants of Ontario was established and incorporated by 46 Victoria, Chapter 62, Ontario. The objects of the incorporation are expressed to be "to enable the incorporators to give effect to the aims they seek to accomplish as an intellectual movement to raise the standard of accountancy." The

Institute is empowered to establish classes, lectures and examinations, and to prescribe tests of competency, to qualify for admission to membership, and grant diplomas of fellowship to enable them to use the letters F. C. A. Beyond the right to use these letters there are no special privileges or powers conferred upon members of the Institute.

The Ontario Association of Architects is not a close Corporation. It derives its being from "The Ontario Architects Act," being Chapter 41 of 53 Victoria, Ontario. The preamble is interesting. It is as follows :

"WHEREAS it is deemed expedient for the better protection of
 "the public interests in the erection of the public and private buildings
 "in the Province of Ontario, and in order to enable persons requiring
 "professional aid in architecture to distinguish between qualified and
 "unqualified architects, and to ensure a standard of efficiency in the
 "persons practising the profession of architecture in the Province, and
 "for the furtherance and advancement of the art of architecture."

The right to use the name "registered architect" is restricted to those who register under the Act, and this is the only attempt at close Corporation powers. There is nothing in the Act which prevents any person practising as an Architect in this Province; but unless registered as a member of the Association he must not hold himself out to be a "registered architect," or, in other words, a member of the Society.

A Bill was introduced at the last Session of the Ontario Legislature, at the instance of the Architects, to amend the Act of 1890; but the only material amendment suggested was the substitution of the word "Architect" for "Registered Architect." The change was an important one, for if it had been made, no one not a Member could call himself an Architect. This seems to be what the Architects wanted. The opposition to the Bill, particularly from the country members, was so great that it was withdrawn, but I understand that it will again be introduced.

The Ontario Veterinary Association, incorporated in 1879 by an Ontario Act, is not a close Corporation, but its members are given special privileges over other persons practising as Veterinary Surgeons. Members of the Association are entitled to get professional fees as witnesses, and no one not holding a diploma from the Association, or some other duly authorized Veterinary College, shall be allowed to append to his name the words "Veterinary Surgeon," or any abbreviation thereof.

The Druggists and Dentists may be instanced as corporate bodies, who in Ontario, and, I think, in all, or nearly all, the other Provinces, have been formed into close corporations by Acts of the various Provinces, and those who are not duly registered under the provisions of their respective Acts and in the manner prescribed by the Government are excluded from practice.

The "legal" and "medical profession" are the most prominent instances of "close Corporations," the former deriving its status in this Province from "The Act respecting the Law Society of Upper Canada," being Chapter 145, "An Act respecting Barristers-at-Law," being Chapter 146, and "An Act respecting Solicitors," being Chapter 147 of the Revised Statutes of Ontario, and the latter deriving its status from "The Ontario Medical Act," being Chapter 148 of the Revised Statutes of Ontario as amended by 56 Victoria, Chapter 27. These bodies are entirely under the control of a Society or Council chosen from the members thereof, and no person in any of the Provinces can practise as a Lawyer or a Doctor without registration and without strictly conforming to the Rules of the Law Society or Medical College, as the case may be.

I need not refer in detail to the provisions of these Acts, as they are familiar to almost everyone. If the powers enjoyed by the Law Society and the College of Physicians and Surgeons could be obtained by the Engineers, the full object of the latter would be attained.

The Veterinary Surgeons of Manitoba are a close Corporation by the Act of 1890. Only those who are registered under the Act can practise or be appointed as Veterinary Surgeons in any branch of the public service of the Province.

The "Association of Ontario Land Surveyors" (see Amended Act, Chapter 34 of the Statutes of 1892) is a close Corporation, as the Act provides that, with a few important exceptions, no person, except those registered under the Act, shall use the name of Ontario Land Surveyor, or Provincial Land Surveyor, or any name implying that he is registered, unless registered under the Act, nor can anyone unless registered under the Act act as a Surveyor of Lands within the Province.

It may be noted that special provision is made for the admission of any Dominion Land Surveyor who has got his title under The Dominion Lands Act.

I have read and considered numerous other Acts relating to professional bodies, but the above will, I think, be sufficient to consider and refer to.

Without going into a detailed or lengthy argument or citing authority, I might say that it seems quite clear that it is beyond the power of the Dominion Parliament to create a professional Corporation, with power to exclude persons not members of the Corporation from practising in the different provinces, or to confer such powers upon an existing Corporation. This would, I think, be such an interference with Civil Rights in the Provinces as is prohibited by the Confederation Act, and it will be noticed that all the Close Corporation Acts to which I have referred are *Provincial Acts*, and so far as I have been able to ascertain there never has been any disallowance of such Acts by the Dominion Government. The only attempt on the part of the Dominion Parliament to confer a monopoly of this character is in the Dominion Lands Act, where it is provided that only Dominion Lands Surveyors shall act as Surveyors of Dominion lands. There is no objection to this limit, as it is simply a matter of regulation as to Dominion Lands.

I do not see any way to meet the difficulty except to obtain a uniform Act from each of the Provincial Legislatures. This course may be found to be impracticable, even if each Province will give such an Act; but in my opinion nothing else will meet the situation. Each Act will, of course, establish a separate and distinct corporation, under the control of the particular Legislature creating it, and each Legislature being incapable of interfering with the creation of any of the other Legislatures, but for all practical purposes the aggregation of Corporations being necessarily under one general Council.

How to surmount these difficulties has been the occasion of much study on my part—the situation is quite unique. We have given a profession which, having regard to the nature of its duties, is essentially a Dominion and even national profession, but which, to occupy the desired status, must get its authority from each one of seven local legislatures. These questions, which arise here owing to the peculiarity of the Canadian Constitution and the mode of distributing Legislative Powers under the British North America Act, cannot arise in England, where the one Parliament in London legislates on all subjects over the whole of the British Islands; but it may arise in the United States, and the difficulties which present themselves to me, and which I see have been the subject of discussion for a considerable time amongst the Engineers, have probably been found to be insuperable on the other side, and hence no incorporation has been obtained from Congress or any of the State Legislatures.

I append a draft of a Bill which will furnish a foundation for discussion and consideration by the Committee. It will show how some of the difficulties may be got over, but not, I fear, all. It is

intended for the Ontario Legislature, and is framed upon the lines of the existing Acts establishing close Corporations. I have endeavoured to make the Bill as general as possible, so as to leave a very large amount of power in the hands of the Council, who can provide by By-Law for matters upon which the Act is silent, and thus secure as high a degree of uniformity as is possible.

I would strongly urge the Committee to test the strength of the Society, first in the Ontario Legislature, and as a preliminary to bring the matter before the Attorney-General of Ontario when the Society has quite decided upon its line of action. The Ontario Government may be induced to give the Bill its support, and, if so, its success will be assured. It would be well at any rate to get the Attorney-General's suggestions before submitting the Bill to the House, and, if necessary, such suggestions may be worked into the draft and, perhaps, the Bill remodelled.

It will be observed that I treat the Bill as a *public* and not as a private Bill. I think that this course should be followed in the other Provinces, so that there will in effect be one uniform law throughout Canada for the regulation of the Engineering profession.

I also append a Draft of a Bill to amend the Society's Act of Incorporation. This has been prepared on the lines of the suggestions made by Mr. Shanly, and deals with a subject quite within the competence of the Dominion Parliament, and covering, as I gather from the papers, a very important branch of Engineering work.

I will be very glad to discuss with the Committee the question of preceding the Ontario Bill by this Dominion Bill, or holding it in abeyance for the present.

One point which should be very carefully considered is whether it would not be wise, or rather politic, to provide for the approval of By-Laws by the Lieutenant Governor in Council, and another whether provisions should not be inserted as to penalties for taking the title of Civil Engineer without qualification, and for the recovery thereof. I have advisedly left out the penalty clauses, as I do not think that the enforcement of a penalty will be required, and the Act will look much less formidable without these sections. Amending Acts may afterwards be got, if necessary, and if it is found that the existing machinery is not sufficient.

It should also be considered whether the Act should not provide expressly for the admission of any particular class of students, and whether privileges should not be given to matriculants or graduates of a Provincial University. At present I have thought it better to leave these questions to the Council to be dealt with by By-Law.

TORONTO, 7th December, 1895.

(Strictly Confidential.)

DOMINION BILL.

AN ACT TO AMEND "AN ACT TO INCORPORATE THE CANADIAN SOCIETY OF CIVIL ENGINEERS."

PREAMBLE.

WHEREAS by the Act Chapter 124 of the Statutes of Canada, Preamble. passed in the 50th and 51st year of Her Majesty's reign, the Canadian Society of Civil Engineers was incorporated for the purposes and objects therein expressed, and it is deemed advisable to provide that the public works of Canada and of public corporations under the control of the Parliament of Canada should be constructed under the supervision of duly qualified engineers, and the said Society has petitioned for the passage of this Act;

AND HEREAS it is expedient to grant the prayer of the said Petition;

THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. No person other than a member of the Canadian Society of Civil Engineers, or a member in good standing of some British Society of Civil Engineers, or a person entitled by some Statute of the Dominion of Canada or of the late Province of Canada to use the title "Civil Engineer," shall be employed as an Engineer in the surveying, designing or supervising of the construction of any engineering work whatever, carried on by or under the authority of the Dominion of Canada, or upon which public money of Canada is being expended, or of any engineering work carried on by any public corporation deriving its authority from the Parliament of Canada. The Act 50 and 51 Victoria, Chap. 124 amended.

(Strictly Confidential.)

"AN ACT RESPECTING THE PROFESSION OF CIVIL ENGINEERS."

WHEREAS it is deemed expedient for the better protection of the public interests and for the general advancement of Mechanical Science, and more particularly for promoting the acquisition of that species of knowledge which has special reference to the profession of a Civil Engineer, and to encourage investigation in connection with all branches of knowledge connected with the profession, and in order to enable persons requiring professional aid in any work, to which such knowledge of Civil Engineering is applicable or necessary, to distinguish between qualified and unqualified Civil Engineers;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of———, enacts as follows :—

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| Short Title. | 1. This Act may be cited at "The —— Civil Engineers Act." |
| Incorporation of the Canadian Society of Civil Engineers. | 2. The Civil Engineers of Canada heretofore incorporated by an Act of the Parliament of Canada, being Chapter 124 of the Acts passed at the Session held in the 50th and 51st year of Her Majesty's reign, under the name and style of "The Canadian Society of Civil Engineers" shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of real and personal property for the purposes of its constitution, and to sue and to be sued in the manner usual with such corporations. |
| Members. | 3. All persons who, on the day this Act comes into force, are members of the said existing Canadian Society of Civil Engineers, and all persons who shall hereafter be admitted as members of the Society hereby incorporated, and who shall be registered under the provisions of this Act, shall be members of the said Society. |
| Council. | 4. There shall be a Council of Management of the said Society, to be appointed in the manner provided for in this Act, and hereinafter referred to as "the Council." |
| How composed. | 5. The Council shall be composed of twenty-one persons, who shall in the first instance and as a Provisional Council consist of the present Council of the existing Canadian Society of Civil Engineers, if British subjects and residing within the Dominion of Canada. |
| First Meeting of Council. | 6. The members of the said Provisional Council shall meet in the City of ——, in the County of ——, for the purpose of organization, within one month after the passing of this Act, at such time and place as may be directed by proclamation in the—— <i>Gazette</i> , and at such meeting any five members of the Council shall form a quorum. |
| First General Meeting. | 7. A General Meeting of the members of the Society shall be called by the Provisional Council, on or before the first day of February next after the passing of this Act, for the election of a permanent Council. The time and place for such meeting shall be determined by the Provisional Council, and at least two weeks' notice in writing shall be given by the Secretary to each member of the Society, and such meeting and any subsequent meeting of the Society |

may be held without this Province but in the Dominion of Canada, as the Council may from time to time determine.

8. All members of the Permanent Council shall be elected by Permanent ballot, each member having one vote, and the member or members Council obtaining the greatest number of votes shall be declared elected.

9. The members of the Council so elected shall hold office for Term the following terms respectively: The seven names who have received the greatest number of votes shall hold office for the term of three years, the next seven names for the term of two years, and the third and last seven names for the term of one year. Office.

10. No person shall be eligible for election to the Council, or qualified to fill any vacancy therein, or to vote for any member thereof of at the first election, unless at such time he shall be a duly qualified member of the said existing Canadian Society of Civil Engineers; and no person shall be eligible for election to the Council, or qualified to fill any vacancy therein, or to vote for any member thereof at any subsequent election, unless duly qualified under the provisions of this Act and the By-laws of the Society. Qualifications.

11. In case of the death or resignation of any member or members of the Council, the other members of the Council shall have power to fill all vacancies so caused until the time of the holding of the next Annual Meeting. Vacancy.

12. Meetings of the Society and Council shall be held at such times and places as may be fixed by By-Law of the Society, and at all meetings of the Society or Council the President or Chairman for the time being shall have a casting vote. Meetings.

13. The Council shall have full power to enact By-Laws for : Power to enact By-Laws.

(a) The qualification, election and registration of members of the Society.

(b) The appointment and removal and defining the functions and duties of all officers and servants of the Society, and their remuneration, the time and place of holding meetings of the Society and Council, and the notice to be given therefor.

(c) The calling of all meetings, the quorum and the procedure in all things at such meetings.

(d) The suspension, expulsion, disciplining and re-admission of members.

(e) The appointment of examiners for the purpose of ascertaining and reporting upon the qualifications of persons who shall present themselves for admission and enrolment as students at any examination.

(f) The admission and regulation of students, the periods and conditions of study, and all matters relating to the discipline and honour of the profession.

General
Powers.

(g) The regulating and fixing of the Admission and Annual Fees payable by members and students. And to deal with and regulate all other matters necessary for the government of the Society, and to effectually carry out its objects, and generally to administer the affairs of the Society.

Repeal of
By-Laws, &c

14. And the Council may from time to time repeal, amend and re-enact the By-Laws of the Society; but every such By-Law and every repeal, amendment and re-enactment thereof, unless in the meantime confirmed at a General Meeting of the Society duly called for that purpose, shall only have force until the next Annual Meeting of the Society, and in default of confirmation thereat shall, at and from that time only, cease to have force, and in that case no new By-Law to the same or like effect shall have any force until confirmation at a General Meeting of the Society.

Registrar.

15. The Council shall cause to be kept by an officer appointed by it, to be called the Registrar, a Book or Register, in which shall be entered the name of every person registered as a member of the Society, according to the provisions of this Act, and those persons only whose names are inscribed in the Book or Register above mentioned shall be deemed to be members of the Society, and such Book or Register shall at all reasonable times be open for inspection by any member of the Society or by any other person.

Penalty for
false registra-
tion.

16. If the Registrar shall wilfully make or cause to be made any falsification in any matter relating to the Register, he shall be deemed to be guilty of a misdemeanour, and shall on conviction thereof be imprisoned for any term not exceeding twelve months.

Right to the
title of "Civil
Engineer."

17. On and after the 1st day of July, 189—, no person shall be entitled within this Province to take or use the name and title of "Civil Engineer" or any abbreviation thereof, either alone or in combination with any other word or words, or any name, title or description implying that he is a member of the said Society of Civil Engineers, or act as Engineer in laying out, advising on, constructing or

superintending the construction of any public work, or any work upon which public money is expended, or any important work for the laying out or construction of which a person of engineering skill is required, unless such person is a member of the Society hereby incorporated and registered as such under the provisions of this Act, or unless he is a duly qualified Civil Engineer, and entitled to use the title of Civil Engineer by virtue of some Statute in force in this Province, or by the authority of some Institution of learning in this Province having authority to confer degrees in Civil Engineering, or unless he is a Civil Engineer who has been practising as such in this Province at the time of the passing of this Act, or unless he is a member in good standing of some Institution of Civil Engineers in Great Britain and Ireland, or of some National Society of Civil Engineers of good standing in any foreign country.

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